

Before The

**Local Boundary Commission**

**Alaska Department of Community  
And Economic Development**

In the Matter of the Petition for  
Consolidation of the City of Fairbanks  
and the Fairbanks North Star Borough

**Brief of the City of Fairbanks**

Respectfully Submitted this 28<sup>th</sup> day of July, 2000.

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## **I. Summary.**

Residents of the City of Fairbanks — like nearly two-thirds of all Alaskans — live within Home Rule municipalities.<sup>1</sup> The Consolidation Petition proposes a major change in local government, a change that would result in the loss of Home Rule for the residents of the City. This is not a move towards “maximum local self government with a minimum of local government units. . . .”<sup>2</sup> Instead, the Petition seeks a step backward that would on one hand deny the residents of the City of Fairbanks the local control that a City Charter and Home Rule provide, and on the other hand not enhance the services to those living outside the City.

The social characteristics of the City of Fairbanks (“the City”) greatly differ from those of the suburban and rural residents of the Fairbanks North Star Borough (“the existing borough”). The difference in density of settlement is itself significant. In addition, the existing borough and the City provide different services, operate under a different philosophy, and serve different roles.<sup>3</sup> The Local Boundary Commission (“LBC”) has previously recognized that the City is “urban” as compared to the neighboring territory.<sup>4</sup> The Commission’s action on recent City annexations — and the implications of its denial of the recent Salcha Detachment Petition — reflects the appropriateness of the City as an effective unit of local government.<sup>5</sup> The City’s ordinances and policies reflect that the

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<sup>1</sup> Dan Bockhorst, Department of Community and Regional Affairs: *Home Rule, Maximum Local Self-Government*, at 2 (2000).

<sup>2</sup> Alaska Const. art. X, § 1

<sup>3</sup> Affidavit of [City Mayor] James C. Hayes. (*Exhibit “A”*)

<sup>4</sup> *In the Matter of the Annexation of Fairbanks North Star Borough Old Richardson Service Area and Tax Lots 2401 and 2405 Composing 164 Acres to the City of Fairbanks*, Local Boundary Commission Statement of Decision (October 4, 1986).

<sup>5</sup> *In the Matter of the Petition for Detachment of Territory from the Fairbanks North*

philosophy of City residents diverges from rural residents regarding the means of generating local government revenues and the desires regarding government operations.

There is little functional overlap in services between the City and the existing borough and any cost savings that would result from consolidation would be insignificant. In fact, the combined total tax cost per capita of the City and the existing borough is less than that of the Unified City and Borough of Juneau, and virtually the same as the much larger Unified Municipality of Anchorage. (See p. 27.)

The proposed consolidation would significantly impair the ability of the citizens of the City and existing borough to control governmental services, philosophy, and assets. The Petition would paste a so-called “Urban Service Area” (a former Home Rule City) onto a Second-Class Borough. This is unlike the proposed Ketchikan Consolidation or the recent Haines Consolidation effort, both of which proposals proposed a consolidated **Home Rule** municipality. The affairs of the “Urban Service Area” would be complex enough to require a paid management staff to replace an elected Mayor who serves at the pleasure of the voters.

Fairbanks was one of the first cities in Alaska to adopt Home Rule after Alaska became a state in 1959. Ten of twelve Home Rule Alaskan cities adopted charters by 1965.<sup>6</sup> Four of the last five boroughs to be incorporated in the State are Home Rule boroughs.<sup>7</sup> The history of the Alaska Constitution reveals the intent of the drafters of the

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*Star Borough and the Incorporation of the North Pole Borough*, Local Boundary Commission Statement of Decision.

<sup>6</sup> Dan Bockhorst, Department of Community and Regional Affairs: *Home Rule, Maximum Local Self-Government*, at 2 (2000).

<sup>7</sup> Dan Bockhorst, Department of Community and Regional Affairs: *Home Rule, Maximum Local Self-Government*, at 2 (2000).

Constitution was to encourage Home Rule as part of “maximum local self government” and also reveals **no** preference that cities be necessarily consolidated into boroughs.<sup>8</sup>

## **II. Review of the Consolidation Petition.**

The Petition would place before the voters the question of whether to eliminate the City of Fairbanks and the Fairbanks North Star Borough and replace these municipalities with a new borough to be called “The Municipality of Fairbanks.” The new borough would be a second-class borough, with the same boundaries and most of the area-wide powers as the Fairbanks North Star Borough. For some unexplained reason, the City of North Pole would not be consolidated and would continue its current status as a very small Home Rule city. This omission is inconsistent with the stated claims of the Petition.

The Petition assumes that the new Municipality of Fairbanks would establish an “Urban Service Area” in the territory of the former City of Fairbanks. Service areas are not incorporated units of government and have no legal existence. Instead, a service area is simply a part of a borough under the control of the borough assembly:

A service area to provide special services in a borough may be established, operated, altered, or abolished by ordinance. Special services include services not provided on an areawide or non-areawide basis in the borough, or a higher or different level of service than that provided on an areawide or non-areawide basis.<sup>9</sup>

Residents of a service area have no right to elect the service area supervisory body. AS 29.35.460 provides that service areas are “supervise[d]” by “an appointed or elected board.” Fairbanks North Star Borough service area commissioners are appointed by the Borough Mayor and confirmed by the Assembly. There are currently over 110 service areas

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<sup>8</sup> *(Exhibit “B”)*

<sup>9</sup> AS 29.35.450(a).



of the Fairbanks North Star Borough providing a variety of governmental services such as road construction and maintenance, fire protection, and even water, sewer, and streetlights in isolated areas. Most are road service areas, which are in some cases quite small. None of the current service areas provide police protection and none are “multi-function” as the Petition proposes.

The Petition assumes that the new “Municipality of Fairbanks,” through a proposed “Urban Service Area,” would provide the residents of the former City of Fairbanks with most services previously provided by the City. Residents of the “Urban Service Area” would be subject to a higher mill levy than the area outside the service area, as well as a 5% alcohol tax and an 8% tobacco tax. It is noteworthy that the current City bed tax revenues are not designated for the “Urban Service Area” but instead would become part of the new borough’s general fund.<sup>10</sup>

Under the Petition, the terms of all elected officials of the current City, Borough, and School District would end. A new Municipality of Fairbanks Borough Mayor, Borough Assembly, and Borough School Board would be elected. Residents of the former City of Fairbanks would have no right under State law or charter to elect service area commissioners or to retain direct control over the affairs of the former City assets, debts, or operations. Instead, they would become part — a minority — of the single at-large voting block that elects the officials of the new Municipality of Fairbanks.

In the history of local government since statehood, there have only been three instances where a consolidation petition has reached the LBC. A petition to consolidate the

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<sup>10</sup> This change will reduce funding for the “Urban Service Area” below the current funding from the City bed tax. The City FY 2000 budget projects \$2,272,881 in bed tax receipts.

first-class City of Haines and the third-class Haines Borough into a Home Rule borough was approved by the LBC in 1998. The voters narrowly rejected it.

A petition is pending before the LBC regarding the Ketchikan Gateway Borough and the City of Ketchikan to consolidate a second-class borough and a Home Rule city into a Home Rule borough.

The Fairbanks consolidation Petition is the third. Unlike the other two consolidation petitions, the Fairbanks Petition does not propose a consolidated Home Rule municipality. Another distinction is that in both other cases the cities were offering services that properly should have been area-wide (parks and recreation, jail, hospital, port & harbor, library, etc.).

The “Urban Service Area” form of governance proposed by the Petition would radically alter the Home Rule powers that the residents of the City of Fairbanks have selected for themselves for the past four decades:

| <b>Comparison</b><br><i>City of Fairbanks Home Rule Charter v. Municipality of Fairbanks "Urban Service Area"</i> |   |
|---|---|
| <b>1960 Home Rule Charter (as Amended)<br/>Provides For:</b>  | <b>Urban Service Area Would Provide For:</b>        |
| <b>Council – Mayor form of government<br/>[Charter Sec. 1.2]</b>  | <b>Council – Mayor form of government abolished</b> |

|   |  |
|---|--|
| <b>Home Rule powers [Charter Sec. 1.3]</b>                                      | <b>Home Rule powers abolished</b>  |
| <b>Council, Mayor elected to staggered terms [Charter Sec. 2.1]</b>             | <b>Non-elected appointed officials</b>   |
| <b>Adoption of ordinances [Charter Sec. 3.1]</b>                                | <b>No legislative powers</b>   |
| <b>Strong Mayor form of governance [Charter Sec. 4.1]</b>                       | <b>Non-elected, appointed officials</b>  |
| <b>City Attorney, City Clerk [Charter Secs. 4.5, 4.6]</b>                       | <b>No such positions</b>   |
| <b>Annual budget process by the Council and Mayor [Charter Sec. 5.1]</b>        | <b>Budget process by the Second-Class Borough for the "Urban Service Area"</b> |
| <b>Taxation by the City Council [Charter Sec. 6.2]</b>                          | <b>Taxation by the Second-Class Borough Assembly</b>                           |
| <b>Tax Cap [Charter Secs. 6.5, 6.6]</b>   | <b>No tax cap</b>  |
| <b>Borrowing for Capital Improvements [Charter Sec. 7.1]</b>                    | <b>No authority to borrow</b>  |
| <b>City Permanent Fund [Charter Sec. 8.8]</b>                                   | <b>City's Permanent Fund becomes a Borough asset</b>                           |
| <b>Election of Mayor and Councilmen [Charter Sec. 11.2]</b>                     | <b>No elections of appointed "Urban Service Area" administrators</b>           |
| <b>Initiative, Referendum and Recall [Charter Sec. 12.1]</b>                    | <b>No such process for residents of the "Urban Service Area"</b>               |
| <b>Amendment of Charter by Council or Initiative [Charter Secs. 14.1, 14.3]</b> | <b>No Charter, so no amendment process</b>                                     |
| <b>City-raised Revenues used within the City [Charter Articles V and VI]</b>    | <b>"Urban Service Area" revenues are Borough assets</b>                        |

### **III. Local Government in Alaska.**

The City of Fairbanks was organized on November 10, 1903.<sup>11</sup> Attached is a copy of the original incorporating document. (*Exhibit "C"*) Upon statehood, local government in Alaska became a creature of the State Constitution. In 1960, soon after statehood, the City voters adopted a Charter and became a "Home Rule" City under Alaska law.<sup>12</sup> AS 29.04.010 provides that "a home rule municipality has all legislative powers not prohibited by law or charter." A copy of the City's Charter is attached. (*Exhibit "D"*)

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<sup>11</sup> At that time, the 1884 District Organic Act authorized local government in the territory of Alaska. Section 7 of that act applied the laws of the State of Oregon to the Territory of Alaska.

There were no boroughs or other entities of regional government prior to statehood. public utility districts were authorized to provide utility service outside of cities. Nearly all public utility districts were located around the cities of Anchorage and Fairbanks. Alaska's constitutional system of local government provides that **“all local government powers shall be vested in boroughs and cities.”**<sup>12</sup> The Constitutional delegates chose not to copy the county model of government, as used in most other states.<sup>14</sup> Counties had been forbidden under Alaska territorial law without the express consent of Congress.<sup>15</sup> Instead of counties, the members of the Constitutional Convention sought to create a more flexible<sup>16</sup> system to suit the needs of each part of the State. The Constitution does not define the boundaries, powers, or organizational structure of boroughs, nor require that all boroughs be the same. This is unlike the traditional county system, which features rigidly assigned and uniform powers, duties, and organizational structures.<sup>17</sup>

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<sup>12</sup> Alaska Const. art. X, § 9-10.

<sup>13</sup> Alaska Const. art. X, § 2 (emphasis added).

<sup>14</sup> In order to show the alternative approach, names like “canton, section, township, province, division, denali, tundrburg, nunali, and munipuk” were considered, as well as “district” and “area.” Cease & Saroff, *The Municipal Experiment in Alaska: A Study of Borough Government*. (Praeger, New York, 1968), *Alaska Constitutional Convention Proceedings* at 3600-3608.

<sup>15</sup> The Territorial Organic Act, § 9, 37 Stat. 512 (1912) replaced the 1884 District Organic Act barring the Territorial Legislature from passage of any “acts or laws . . . providing for a county form of government” without consent of Congress.

<sup>16</sup> The word “flexible” appears numerous times in the Constitutional Convention's minutes in the course of discussions about municipal government.

<sup>17</sup> Alaska still has nearly as many “hybrid” governments as all other states combined. The 1999 Municipal Yearbook indicates the nation has some 3,000 counties; outside Alaska, there are only five: San Francisco, Denver, Honolulu, Anaconda-Deer Lodge, and Butte-Silver Bow are hybrid “city-counties.” 1999 International City/County Management Association, *Municipal Yearbook* (Washington, D.C.) at xiii.

Today only 3% of Alaskans live outside municipalities.<sup>18</sup> Yet, it was not until 1961 that the Legislature enacted a statute providing for the establishment of boroughs.<sup>19</sup> Voters in the Fairbanks area opposed the formation of a borough. In 1963, the Legislature passed the “Mandatory Borough Act,”<sup>20</sup> which formed the second-class “North Star Borough” and other boroughs.

Terrence Cole, Professor of History at the University of Alaska, Fairbanks, examined the process by which the framers of the Alaska Constitution created cities and boroughs.<sup>21</sup> (*Exhibit “B”*) The Constitutional Committee on local government grappled with the role of the traditional city versus a new regional form of government, as well as the problems faced in the Anchorage area, where a number of overlapping public utility districts exercised taxation powers:

As Delegate Vic Fischer said on the convention floor, quoting from a Presidential study on the problem of Intergovernmental relations, the committee wanted to avoid having “‘too many local governments and not enough local government.’ That is one of the points we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary.”<sup>22</sup> The committee explained their logic as follows:

The committee on local government aimed at providing a maximum of self-government to

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<sup>18</sup> Dan Bockhorst, Department of Community and Regional Affairs: *Home Rule, Maximum Local Self-Government*, at 2 (2000).

<sup>19</sup> *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543, n.18 (Alaska 1962) (noting passage of ch. 146 SLA 1961).

<sup>20</sup> Ch. 52 SLA 1963.

<sup>21</sup> Terrence Cole, Ph.D., *Cities and Boroughs, The Dual System of Local Government in Alaska* (2000). (*Exhibit “B”*)

<sup>22</sup> *Alaska Constitutional Convention Proceedings*, Vol. 4, at 2617.

people in all parts of Alaska. To meet this goal, two basic local government units were established — boroughs and cities. This framework is designed to accommodate today's needs and tomorrow's growth and development. . . . The borough, area-wise, is the larger of the two local government units. **Cities would be located within the boundaries of the boroughs. The relationship between the two emphasizes mutual interest and cooperation.**<sup>23</sup>

(Emphasis added.) (*Exhibit "B"* p. 14-15.)

Many of the delegates to the Convention carefully considered the relationship between the proposed borough and cities within a borough:

Delegate James Hurley of Palmer admitted he was confused about the proposed status of the cities in a discussion with local government chairman John Rosswog of Cordova:

**Hurley:** What I am trying to find out is just where the city fits in this picture. Does the city decide what services it is going to render within the city regardless of what the borough has decided to render?

**Rosswog:** Certainly.

**Hurley:** The borough, then, has nothing to say about the services that the city offers its own residents within its boundaries. Is that true?

**Rosswog:** Yes, the city should remain as much the same as today, or practically the same unless there are some gradual changes in the future . . . .

**Hurley:** In essence, then, you have two local government units?

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<sup>23</sup> *Alaska Constitutional Convention: General Discussion of Local Government Under Proposed Article*, 19 December 1955, Chief Clerk's File, 320.6, Committee Proposal No. 6a.

**Rosswog:** Yes, that is right.<sup>24</sup>

(Exhibit “B” p 16.)

The framers of the Constitution intended that cities within boroughs would continue to exist and thrive.

#### **IV. Role of the Local Boundary Commission.**

The LBC was created by the Alaska Constitution to act on questions of municipal incorporation or alteration. Our courts give great deference to the LBC in light of its “special function of the Commission, to undertake a broad inquiry into the desirability of creating a political subdivision of the state.”<sup>25</sup> The Constitution “established two methods by which local boundaries might be changed: (1) by direct action of the Local Boundary Commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action.”<sup>26</sup>

The LBC is “to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest.”<sup>27</sup> As the court stated in *Fairview*, a review of the minutes of the Constitutional Convention demonstrates that the interests of the state as a whole were to be used:

An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and

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<sup>24</sup> *Alaska Constitutional Convention Proceedings*, Vol. 4, at 2653.

<sup>25</sup> *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97 (Alaska 1974).

<sup>26</sup> *Port Valdez Co., Inc. v. City of Valdez*, 522 P.2d 1147, 1151 (Alaska 1974).

<sup>27</sup> *Port Valdez*, at 1150 n.7., citing *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962), *appeal dismissed*, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962).

that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee, lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.<sup>28</sup>

The mere existence of a petition, signed by a small percentage of voters (in this case, over a two-year period), does not in itself mean that a petition's proposal would be sound government.

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<sup>28</sup> *Fairview*, at 368 P.2d 540 543 ); *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1969).



**V. Distinctions Between Unification, Consolidation, and Merger.**

Under Alaska law,

1. In a merger, one or more municipalities dissolve, and another municipality assumes the powers, duties, assets, and obligations of the disappearing municipalities. Merger requires approval of the LBC and approval of the majority of voters living in “the area to be included in the proposed municipality.” AS 29.06.140(a).

2. Unification means that all municipalities in a borough disappear and a new single Home Rule municipality is created, with all powers approved by the voters as set forth in the Home Rule charter. The new unified municipality assumes the debts and assets of the disappearing municipalities. No city “survives” the process of unification. Unification requires a charter and voter approval. Unlike merger or consolidation, the votes are cast in “pools” — a pool for all voters living outside any first-class or Home Rule city in the proposed unified municipality and a pool for voters living inside **each** Home Rule or first-class city in the proposed unified municipality. In the alternative, if the question is not approved by the voters in each pool living inside each first-class or Home Rule city, the question can still be approved by “at least 55 percent of all the voters voting on the question in home rule and first class cities” — as a single pool — “and by a majority of voters outside those cities . . .” AS 29.06.280(a).

3. In consolidation, two or more municipalities dissolve and a new municipality of some sort is created. The new municipality assumes the assets and liabilities of the dissolving municipalities. There is no requirement that all municipalities in the affected area take part or that the resulting municipality be a Home Rule government. Consolidation requires the approval of the LBC and the approval of the majority of the voters living in “the

area to be included in the proposed municipality.” AS 29.06.140(a). In this case, the small Home Rule City of North Pole would be the only remaining city, whose residents would continue to enjoy the benefits of Home Rule. Consolidation of the larger city and the existing borough without the smaller city is not consistent.

#### **VI. The Consolidation Petition Should Be Denied.**

Once a petition for consolidation in the proper form and required composition and number of signatures is received by the LBC, LBC staff reviews it. The LBC may “amend the petition and may impose conditions for the . . . consolidation.” The LBC applies the following four cumulative tests:

1. That the consolidation “meets applicable standards under the state constitution . . .
2. . . . and commission regulations.”
3. That the new “municipality after the . . . consolidation would meet the standards for incorporation under AS 29.05.011 [cities] or 29.05.031 [boroughs]” and,
4. That the “consolidation is in the best interests of the state.”

If the Commission is not satisfied that the consolidation is in the best interests of the state, or that it does not meet the other standards, “it shall reject the petition.” AS 29.06.130(a).

#### **A. The Petition does not meet Constitutional standards.**

Nothing in Article X addresses or requires consolidation of cities within boroughs or creation of more than one city inside a borough. Article X, § 1 provides that the “purpose of this article is to provide for maximum local self-government with a minimum of local government units.” Victor Fischer, an authority on Alaska government,

advises that the minimum of local government units language . . . was aimed at avoiding special districts such as health, school, and utilities districts having separate jurisdiction or taxing authority. He notes no policy was stated limiting the number of cities and boroughs.<sup>29</sup>

The concept that all cities within organized boroughs would become “Urban Service Areas” was not adopted. A full discussion on the history of the Constitutional provisions regarding local government is attached. (*Exhibit “B”*) Converting a viable city of 32,000-plus residents into a service area inside a second-class borough does not provide for “maximum self-government with a minimum of local government units.”

**B. The Petition does not meet statutory requirements.**

The LBC is required to apply the same test to consolidation as it would apply to incorporation of a borough. AS 29.05.031 provides those standards. One section is of concern in this case:

(1) **the population of the area is interrelated and integrated as to its social, cultural, and economic activities**, and is large and stable enough to support borough government.

(Emphasis added.)

The essential character of the City of Fairbanks and North Pole is different than the area outside the two cities.<sup>30</sup> Both cities provide a host of urban services that are not provided outside their boundaries. Unlike the existing borough, the City of Fairbanks provides many services that are not duplicated. Just a few examples are police protection and criminal

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<sup>29</sup> DCRA Report to the Alaska Local Boundary Commission on the Proposed Yakutat Borough Incorporation and Model Borough Boundaries for the Prince William Sound, Yakutat, Cross Sound/Icy Strait Regions 50 (December 1991); *Keane v. Local Boundary Commission*, 893 P.2d 1244 n.7 at 1251 (Alaska 1995).

<sup>30</sup> This is true for the City of Fairbanks and the City of North Pole. As noted at page 1, the Petition has for some reason not included North Pole in the proposed consolidation.

prosecution, enhanced advanced fire protection, fire code enforcement, twenty-four hour paramedic level advanced life support, building code enforcement, city-wide street maintenance and construction, snow removal, storm drain system, curbside refuse collection for all residential buildings with unlimited volume, street lighting, right-of-way regulation, and economic development. See the Affidavit of [City Mayor] James C. Hayes. *(Exhibit "A")*

City residents live in a much higher density than their rural counterparts, and most are customers of community water and wastewater. The City of Fairbanks, with 31,697 residents living inside 33.8 square miles, has about 940 residents per square mile. The rest of the Borough is populated at only 7 people per square mile! A copy of a census map showing density of population in and around the City of Fairbanks is attached. *(Exhibit "E")*

Looking at it another way, the City comprises only about .45% (less than half of 1%) of the Borough's territory, but 29% of total taxable assessed value. This reflects the concentration of facilities and density of settlement in the City compared to outside the City.

| <b>Borough 99-00 Assessed Taxable Value</b> |                      |
|---|----------------------|
| <b>Borough w/ City of Fairbanks</b>         | <b>3,697,701,845</b> |
| <b>City of Fairbanks alone</b>              | <b>1,064,757,650</b> |

**C. The Petition does not meet regulatory requirements.**

3 AAC 110.240 provides that two or more municipalities may consolidate to form a new municipality if the new municipality meets the standards for incorporation of cities specified in 3 AAC 110.010 - 040, or for boroughs specified in 3 AAC 110.045 - 060. Again, only those provisions which are of concern are printed below:

**3 AAC 110.045. COMMUNITY OF INTERESTS.**

**(a) The social, cultural, and economic characteristics and activities of the people in a proposed borough must be interrelated and integrated. In this regard, the commission will, in its discretion, consider relevant factors, including:**

**(1) the compatibility of urban and rural areas within the proposed borough;**

**(2) the compatibility of economic lifestyles, and industrial or commercial activities;**

**3 AAC 110.055. RESOURCES.**

**The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission will, in its discretion, consider relevant factors, including**

**(1) the reasonably anticipated functions of the proposed borough;**

**(2) the reasonably anticipated expenses of the proposed borough;**

**(3) the reasonably anticipated income of the proposed borough, and its ability to collect revenue.**

(Emphasis added.)

The standard referred to in section 3 AAC 110.045 is related to AS 29.05.031(1) and is addressed above. However, of greater concern is the effect of the proposed 10-mill

maximum tax levy on the ability of a consolidated Municipality of Fairbanks to operate. The mill levy chart at page 21, *infra*, clearly shows that if the City and the existing borough were consolidated, the aggregate mill levy would be about **double** the maximum allowed (excluding, for the moment, the amount of pre-cap voter-approved debt, and also excluding the mill levy of any existing Fairbanks North Star Borough service area).

One member of the LBC has already noted the catastrophic potential effect of the cap during a earlier teleconference on this consolidation Petition. Both the City and Fairbanks North Star Borough asked for an extension of time for briefs on this matter until after the 10-mill tax cap vote took place. It is obvious to all that the 10-mill maximum mill levy **will** impair “the ability” of the proposed borough to “collect revenue” within the meaning of the regulation.

Note that the City already operates under a voter-approved tax cap — put into place as part of the City Charter. The proposed 10-mill maximum levy will have no effect on the City in its current form. The effects upon the residents of the current City would be disastrous if consolidation were to occur without a replacement source of revenue.

**D. The Petition is not in the “best interests of the State.”**

In a report recently prepared by LBC staff, a statement of “criteria and principles” that guide the LBC in consideration of a petition to consolidate municipalities<sup>31</sup> is found:

- ▶ **“Consolidation is favored if it will promote maximum local self government with a minimum of local government units.”**
- ▶ **“The proposed consolidated borough must have a community of interests.”**

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<sup>31</sup> Dan Bockhorst, *A Report by the Alaska Department of Community and Regional Affairs: Preliminary Review of the Petition to Consolidate the First Class City of Haines and the Third Class Haines Borough into a Home Rule Borough* (1998).

- ▶ Communications and transportation facilities must “allow for the level of communications and exchange necessary to develop an integrated borough.”
- ▶ The proposed consolidated borough must have a population that is “large and stable enough to support borough government.”
- ▶ The proposed consolidated borough must have “**sufficient human and financial resources to provide municipal services on an efficient and effective level.**”
- ▶ The proposed consolidated borough must have boundaries that conform to natural geography and include all areas necessary of “full development of borough services.”
- ▶ Consolidation shall not deny any individual rights because of race, color, creed, sex, or national origin.
- ▶ Petitioners must present a “suitable plan for transition.”

(Emphasis added.)

In the course of the Haines consolidation review, LBC staff was aware of a pending Fairbanks consolidation Petition effort.<sup>32</sup> The Haines Report even includes a graph of local governments in the State, which assumes that a Fairbanks consolidation will occur.<sup>33</sup> It should be noted that officials of the City of Fairbanks were not involved in the manner alleged in the Petition, and City officials did not advocate consolidation or assist in the preparation of the Petition. See Affidavit of [City Mayor] James C. Hayes. (*Exhibit “A”*)

There are no Alaska Supreme Court cases regarding the issue of municipal consolidation. However, the Supreme Court's reasoning in the *Valleys Borough* case does provide some guidance. The Supreme Court upheld the LBC's decision not to accept a

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<sup>32</sup> *Id.* at 13 n.5 and at 22 (“. . . local officials and residents of Ketchikan and Fairbanks are presently considering consolidation . . .”).

<sup>33</sup> *Id.* at 22.

proposal for incorporation of the proposed “Valleys Borough” because it included the City of Nenana and the “Greater Nenana” area. The LBC found that the statewide “best interests” test was not met because the “Greater Nenana” area and the Denali region were not “cohesive enough” even though the LBC had already determined that the “ideal” boundaries of the borough would include Greater Nenana:

[T]he “ideal” boundaries for a borough in the region include the area from the northern boundary of the Matanuska-Susitna Borough to the western boundary of the Fairbanks North Star Borough. This area includes the communities of Cantwell, McKinley Village, Healy, Anderson and Nenana.

[N]otwithstanding the “ideal” boundaries . . . the Greater Nenana area and the Denali region are not cohesive enough at this time to include both territories within the same organized borough.

In reaching this conclusion, the [LBC] stressed that “ideal” boundaries are intended to represent long-term goals with respect to regional government boundaries in Alaska. Further, it may be necessary and appropriate to deviate from these ideal boundaries in the short-term.

In this particular case, the exclusion of the Greater Nenana area from the area proposed for incorporation is found to be warranted in the short-term on the basis of broad judgments of political and social policy. **The preponderance of testimony in the Denali region was in strong opposition to the inclusion of Nenana at this time. Opposition stemmed from differences in social, cultural and economic considerations. For example, the Denali and Valleys petitions and testimony demonstrated divergent views among the residents of the two areas concerning means of generating local government revenues and philosophies of government operations.**

Thus, there appears to be significant potential that the inclusion of the Greater Nenana area in the Denali Borough might result in the defeat of the incorporation proposition by the voters. Therefore, it was determined to be in the best interests of the State of Alaska and the residents of the Denali region for the



Greater Nenana area to be excluded from the proposed Denali Borough.<sup>34</sup>

(Emphasis added).

Even though the LBC did not refer to any particular section of the Constitution, State statute, or regulation in reaching this conclusion, the Supreme Court found that a finding of a lack of cohesion was an “implied” finding that the “population was not interrelated and integrated” within the meaning of AS 29.05.031(a). If the court can find a “reasonable basis” for the LBC’s decision, it will be upheld.<sup>35</sup>

Thus, local differences in the “social, cultural, and economic considerations” in a proposed borough are relevant to the LBC’s action on incorporation, as are “divergent views among the residents of the two areas concerning means of generating local government revenues and philosophies of government operations.”<sup>36</sup> Any potential cost savings of a larger borough was not factored into the LBC’s or the Court’s decision.

Just as there are differences between Nenana and the balance of the Denali Borough, the City is socially, culturally, and philosophically different from the rural territory of the existing borough. See Affidavit of [City Mayor] James C. Hayes. (*Exhibit “A”*)

Since the formation of the Fairbanks North Star Borough in 1964, the voters have rejected efforts to combine the two units of government. Presently, the City of Fairbanks is the most populated city in the State and the most populated Home Rule city. With some 31,697 residents, it is roughly ten times the population of the median Alaskan Home Rule

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<sup>34</sup> *Valleys Borough Support Committee v. Local Boundary Commission*, 863 P.2d 232, 233 (Alaska 1993) (emphasis added).

<sup>35</sup> *Valleys*, at 232

<sup>36</sup> *Valleys*, at 232. )

city — and about ninety times the population of Nenana, the smallest Home Rule city.<sup>37</sup> The City of Fairbanks annexes territory through a policy that only offers annexation to areas that desire it. (*Exhibit “F”* - list of City Annexations)

In the course of its routine approval of a number of annexations by the City, the LBC has recognized the vitality of the City. In fact, the LBC has encouraged the City to take a more “comprehensive and systematic approach to annexation”<sup>38</sup> and did not advocate the dissolution of the City.

**E. Consolidation would deny City residents the type of government they have chosen.**

The Petition for the Fairbanks consolidation makes several claims, assumptions, and assertions regarding local government after consolidation. Some of these claims are unsupported by the facts or law. Other effects are not mentioned by Petitioner, but are significant.

| Item |                     | Petitioner’s Claims                                | Actual Consequence  | Notes  |
|------|---------------------|--|---|--|
| 1    | <b>Cost Savings</b> | Petition claims Annual Operational Savings of “two | Increased transitional cost; minimal long-term savings. <sup>39</sup> | Petitioner has agreed that Petition overstated |

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<sup>37</sup> Dan Bockhorst, Department of Community and Regional Affairs: *Home Rule, Maximum Local Self-Government*, at 2 (2000).

<sup>38</sup> Local Boundary Commission Decisional Statement, 1998 City Annexation.

<sup>39</sup> Based upon review of petition transition plan with current City and Borough budgets and discussions with Petitioner’s chairman, who identified only a few positions that

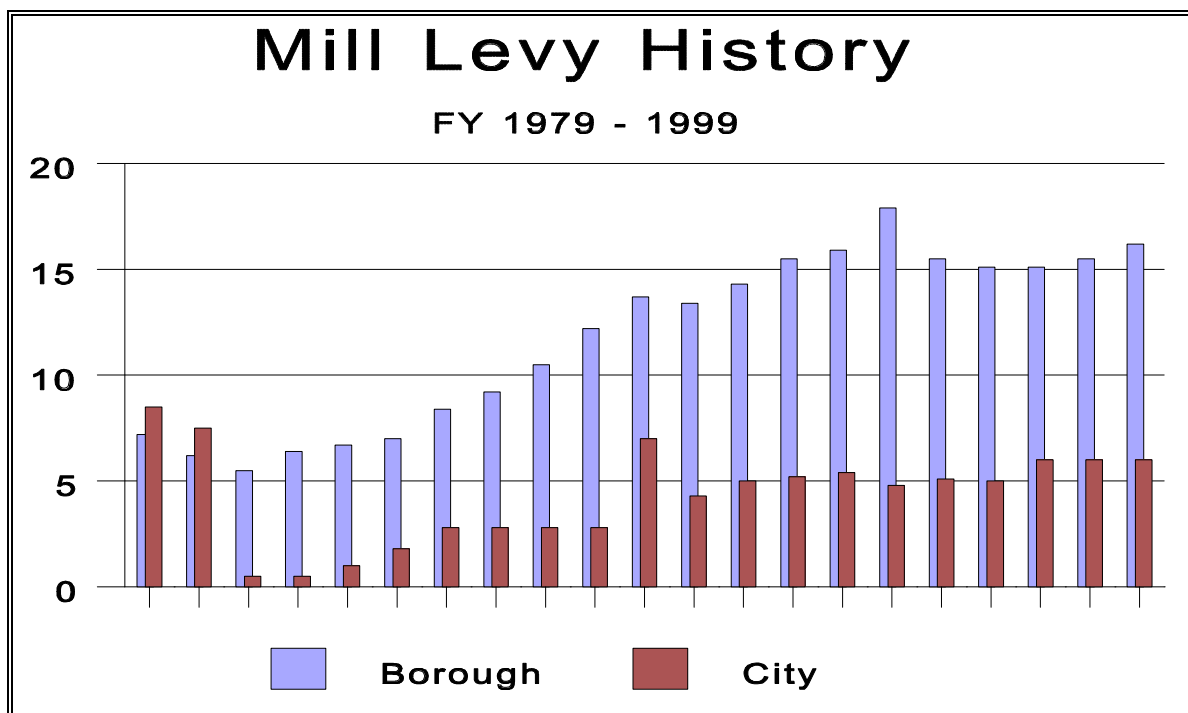
| Item |  | Petitioner's Claims   | Actual Consequence   | Notes  |
|------|--|---|--|--|
|      |  | million dollars."   |  | savings and stated some staff needs to be increased.   |
| 2    | <b>Creation of "Urban Service Area"</b>                      | "Urban Service Area" will govern services to former City territory.   | Under State law, no provision for "Urban Service Area." Service Area commissioners appointed, not elected.   | An "Urban Service Area" would be unworkable  |
| 3    | <b>City \$83 Million Permanent Fund</b>                      | Petition claims that Permanent Fund assets "will transfer to a trust reserved for the benefit and use of new Urban Service Area." | AS 29.06.150 provides that new municipality succeeds to the assets of the consolidated municipalities: no legal requirement that permanent fund assets be used for "Urban Service Area." | Petitioner has declined to provide information as to trust fund claim.   |
| 4    | <b>Bed Tax</b>   | Bed tax would be area-wide and not for benefit of "Urban Service Area."   | Loss of annual revenue to "Urban Service Area": \$2.5 million in FY 2000   | City currently appropriates most of bed tax to visitor industry and non-profits, but retains some for city operations.           |
| 5    | <b>City Charter Provisions, Including Tax Cap</b>            | Not addressed.  | New municipality would have no tax cap initially, and would not be able to adopt permanent tax cap under state law.  | In a general law municipality, cap can be modified or negated after 2 years by ordinance. AS 29.26.190                           |
| 6    | <b>Term Limits</b>   | Not addressed.  | New municipality would not have term limits.   | Initial Assembly possibly be "grandfathered" and not bound by subsequent term limits.  |
| 7    | <b>Expansion of Boundaries of Urban Service Area</b>         | Not addressed.  | New municipality could expand boundaries without giving new areas controlling vote.  | Service Area boundaries can be expanded without consent of newly served area.  |
| 8    | <b>Effect of Ten Mil Tax Cap Initiative</b>                  | Not addressed.  | Currently City is well below the proposed new limits: a consolidated municipality would be unable to operate without new revenue source (e.g., sales tax).                               | LBC Commission member suggested that new sales tax revenue source should be requirement of consolidation.                        |
| 9    | <b>Application of PERA (state collective bargaining law)</b> | Not addressed.  | New municipality could "opt-out" of PERA coverage, resulting in no requirement to collectively bargain.  | <b>Anchorage Municipal Employees Assn. v. MOA</b> , 618 P.2d 575, 579 (Alaska 1980), confirmed right of new assembly to opt out. |
| 10   | <b>Elimination of Overlapping Services</b>                   | Petition perceives overlapping governing bodies, finance, legal, and executive staff.   | City and Borough staffs have very little overlap in services on a functional basis.  | Addressed infra.   |

he believed would be eliminated.

| Item |   | Petitioner's Claims  | Actual Consequence   | Notes   |
|------|---|--|--|---|
| 11   | <b><i>Paramedic Service</i></b>                             | Not addressed.   | New borough would have non-area-wide EMS powers.   | City currently offers paramedic level service integrated with fire suppression service; beyond EMT level provided by non-area-wide borough. |
| 12   | <b><i>Home Rule Charter</i></b><br><b><i>Since 1960</i></b> | New municipality would not be Home Rule and have no charter. | Home Rule Charter gives the City residents the right to define powers of the City.                                 | Second-class borough does not have a charter.   |
| 13   | <b><i>Techite Pipe Proceeds</i></b>                         | Not addressed.   | "Urban Service Area" residents not guaranteed proceeds like permanent fund; all City assets accrue to new borough. | \$150,000.00/year for 30 years starting in 2002.  |

**F. The City and Borough reflect different governmental philosophies.**

Since the adoption of the tax cap provisions of the City Charter, the City of Fairbanks has been engaged in cost control and reevaluation of services. The City's mill levy has remained low, wage growth has been restrained, and the City's per capita cost of government has remained low. In addition, support staff has remained low compared to the City's operations, and is significantly less than 20 years ago. The City recently authorized its first debt (\$7 million for a new police building) in many years — prior to that, City debt was virtually zero. Even with the recent authorized police station debt, the City is at only 4% of the authorized debt maximum.



As noted earlier, there is virtually no functional overlap between the two governments, and the City has very few administrative employees. Employees work in distinctly different departments:

| <b>Function</b>                       | <b>City of Fairbanks</b> | <b>Fairbanks North Star Borough</b> |
|---------------------------------------|--------------------------|-------------------------------------|
| <b>City Police</b>                    | <b>57</b>                |                                     |
| <b>City Fire &amp; Paramedic</b>      | <b>40</b>                |                                     |
| <b>City Public Works<sup>40</sup></b> | <b>34</b>                |                                     |
| <b>City Finance</b>                   | <b>6</b>                 |                                     |
| <b>City Data</b>                      | <b>2</b>                 |                                     |
| <b>City Executive<sup>41</sup></b>    | <b>3</b>                 |                                     |
| <b>City Clerks Office</b>             | <b>3</b>                 |                                     |
| <b>City Engineering</b>               | <b>16</b>                |                                     |
| <b>City Attorney<sup>42</sup></b>     | <b>6.5</b>               |                                     |
| <b>City Building</b>                  | <b>6</b>                 |                                     |
| <b>Clerk</b>                          |                          | <b>7</b>                            |
| <b>Executive</b>                      |                          | <b>10</b>                           |
| <b>Law</b>                            |                          | <b>5.5</b>                          |
| <b>Assessing</b>                      |                          | <b>23</b>                           |
| <b>Planning</b>                       |                          | <b>19.5</b>                         |
| <b>Computer Services</b>              |                          | <b>16</b>                           |
| <b>Direct Services</b>                |                          | <b>18.65</b>                        |
| <b>Finance</b>                        |                          | <b>35.45</b>                        |
| <b>General Services</b>               |                          | <b>8</b>                            |
| <b>Land Management</b>                |                          | <b>9</b>                            |
| <b>Library</b>                        |                          | <b>49.35</b>                        |
| Public Works                          |                          | <b>49.43</b>                        |
| Parks & Recreation                    |                          | <b>51</b>                           |
| Transportation                        |                          | <b>37.86</b>                        |
| <b>TOTAL</b>                          | <b>173.5</b>             | <b>339.74</b>                       |

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<sup>40</sup> Includes snow removal, refuse collection, building maintenance, and street maintenance.

<sup>41</sup> One (1) Mayor, One (1) Personnel/Purchasing Director, and One (1) Secretary.

<sup>42</sup> Includes Risk Management, Safety, Claims & Benefits, Criminal Prosecution, and Labor Relations. Paralegal is 1/2 time position funded by DWI forfeiture funds.

**G. Significant operational savings from consolidation should not be expected.**

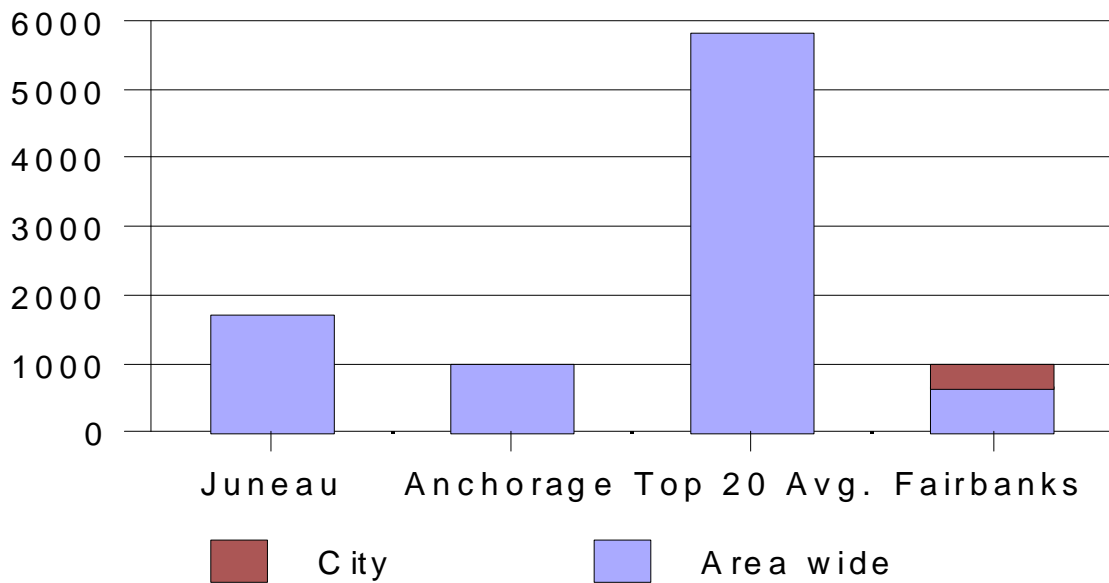
Probably the most alluring alleged benefit of the consolidation Petition is the possibility of cost savings. The Petition suggested that over two million dollars per year could be trimmed from local government costs. However, Petitioner's representative Don Lowell, subsequently has indicated that any cost reductions would be modest. Mr. Lowell also told the Mayor that the committee had come to believe that staff should be added in certain areas.

The reality is that with virtually no overlap in function, little if any reduction in operating cost can be expected. It is the City's understanding that the responsive brief of the Fairbanks North Star Borough projects an increase in costs.

The best indication of the future is the actual experience of other Alaska municipalities. The Unified City and Borough of Juneau and the Unified Municipality of Anchorage are most similar to the City of Fairbanks and the Fairbanks North Star Borough. The best way to measure the true cost of local government is examination of the total tax burden per capita (all taxes of any kind). The authoritative source book for this data is *Alaska Taxable*, a publication of the State Department of Community and Economic Development issued every year by the State Assessor.

Review of the 1999 data reveals that the total tax burden per capita in the City of Fairbanks is much lower than the average of the 20 municipalities with the highest per capita tax rate. For 1998, there were 57 other Alaskan municipalities with a higher tax cost per capita than the City of Fairbanks — Fairbanks didn't even make the first page of the table. (*Exhibit "G"*)

# Annual Per Capita Taxes



More importantly, the **total** tax burden per capita for residents of the City — combined City and Borough taxes — is virtually identical to that of the Municipality of Anchorage, the largest unified municipality in the State where one would expect the greatest economy of scale. The combined City of Fairbanks/Fairbanks North Star Borough per capita tax load is far less than that in the City and Borough of Juneau, and far less than the average of the highest 20 municipalities in the State. (*Exhibit "G"*) See Chart above.

## **H. The Petition's 3-year budget is out-of-date and inadequate.**

Petitioner provided a sketchy three-year budget and transitional plan at Exhibit F to the Petition. During the time that the Petitioner took to obtain required signatures, budget years have passed and it is now Fiscal Year 2000 for both the City and the existing borough. Petitioner's proposed budget provides only minimal information — information too minimal to make any judgments.



The Commission would be better informed by examining the **actual** current City and Borough Budgets. (*Exhibits “H” and “I”*) The actual budgets will reveal the complexity of municipal budgeting, the thousands of assumptions, calculations, and policy determinations that go into building a budget. Because an organizational chart was not included on this year’s City Budget, one is attached. (*Exhibit “J”*) The Commission would be ill-advised to spend a great deal of time analyzing Petitioner’s budget.

It is interesting to look back at the history of unification in our largest City. In a report done just a year or so after the City of Anchorage and the Greater Anchorage Area Borough were unified into a single government, Municipality Mayor George Sullivan convened a task force to look at progress to that date. The committee’s first observation was a complaint about the cost of the new government.<sup>43</sup> Their concern has proven to be valid. Today, Anchorage’s per capita tax burden is almost equal to the total of the City of Fairbanks and the existing borough.

More telling is the history of the other city-boroughs that operate at or above the combined per capita tax level of the current City within the existing borough. (See graph, p. 27).

## **VII. Conclusion.**

As proposed, the consolidated Municipality of Fairbanks would significantly diminish the role of current City residents in local government. Even former cities located inside unified municipalities face this problem — as residents of Girdwood have noted. (*Exhibit “K”*) City voters would lose the ability to elect a City Council to act in accord with the voter’s goals, eliminate the benefits of the City Charter, potentially divert the Permanent

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<sup>43</sup> Final Report, Mayor’s Ad Hoc Governmental Review Committee, Municipality of Anchorage, 1976.

Fund to goals of the new municipality, and potentially cripple the provision of services if the 10-mill maximum levy were to pass. In light of the lack of functional overlap between the City and Borough, operational savings — after an expensive transition period — would be insignificant at best.

Finally, there is a distinct difference between the living patterns, service levels, and political desires and philosophy of City residents from rural residents. The LBC has recognized that the “ideal boundaries” of the Fairbanks North Star Borough would be larger by inclusion of additional rural areas. The LBC’s ideal boundaries did not include consolidation of the City and Borough.<sup>44</sup> The LBC’s previous decisions involving the City of Fairbanks have recognized that the City territory, unlike the area outside the City, is “urban in character.”<sup>45</sup>

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<sup>44</sup> *In the Matters of the “Ideal” North and West Boundaries of the FNSB and Petition of the Fairbanks North Star Borough to Annex 216 Square Miles of Territory to the Fairbanks North Star Borough*, Local Boundary Commission Statement of Decision (October 8, 1990).

<sup>45</sup> *In the Matter of the Annexation of Fairbanks North Star Borough Old Richardson Service Area and Tax Lots 2401 and 2405 Composing 164 Acres to the City of Fairbanks*, Local Boundary Commission Statement of Decision (October 4, 1986).

In many ways, the conversion of the Home Rule City of Fairbanks to a service area would be a step backward. Consolidation to a second-class borough would not maximize local self-government as required by Article X, §1 of the Alaska Constitution. Although there would be one less municipality, the affairs of an “Urban Service Area” would be complex enough to require retention of a paid (not elected) administrator and staff to oversee the activities of the service area. The residents of the City of Fairbanks would lose their ability to guide their future. Those borough residents outside the City of Fairbanks would remain residents of a second-class borough with a complex “Urban Service Area” pasted onto the same governmental structure that has worked well without it.

Are these areas to improve in our current government arrangement? Certainly. But, as H.L. Mencken noted:

The world always makes the assumption that the exposure of an error is identical with the discovery of truth — that the error and truth are simply opposite. They are nothing of the sort. What the world turns to, when it is cured on one error, is usually simply another error, and maybe one worse than the first one.

The consolidation proposal would indeed be worse than what the residents enjoy now.